

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4739 of 2014

1. Deepak s/o. Shankar Sonawane,
Age : 55 years,
Occupation : Service,
R/o. Shera, Presently residing at
Narayan Nagar, Latur, Dist. Latur.
2. Yeshwant s/o. Sahebrao Sonawane,
Age : 45 years,
Occupation : Service,
R/o. Shera, Presently residing at
Laxmidhan Colony, Old Ausa Road,
Latur, District : Latur.

.. Applicants
(Original accused
nos.36 & 37)

versus

1. The State of Maharashtra,
Through Police Station, Renapur,
Taluka : Renapur,
District : Latur.
2. Harishchandra s/o. Limbaji Bhure,
Age : Major,
Occupation : Agriculture,
R/o. Shera, Taluka : Renapur,
District : Latur.

.. Respondents
(No.2 - Original
complainant)

.....

Mr. V.D. Gunale, Advocate, for the applicants.

*Mrs. S.G. Chincholkar, Additional Public Prosecutor,
for respondent no.1 - State.*

.....

CORAM : A.M. BADAR, J.**DATE : 4TH MARCH 2015****PER COURT :**

1. By this application, applicants / accused in Crime No. 111/2012, registered with Police Station, Renapur, District Latur, for the offences punishable under Sections 307, 143, 147, 148, 149, 452, 336, 337 and 506 of Indian Penal Code, read with Section 135 of Mumbai Police Act, are praying for discharging them from the said offences.

2. Heard the learned Counsel appearing for applicants. He vehemently argued that applicant no.1 - Deepak s/o. Shankar Sonawane - is working at Veterinary Hospital, Wadwal, Taluke Chakur, District Latur, whereas applicant no.2 - Yeshwant s/o. Sahebrao Sonawane - is working as Medical Officer with Primary Health Centre, Panchincholi, Taluka Nilanga, District Latur. In the submission of the learned Counsel for the applicants, both these applicants, who are arraigned as accused nos.36 and 37 in the said crime, had left village Shera since they started taking education and they are not even remotely concerned with village politics. The learned Counsel for the applicants further argued that there was election of Grampanchayat at village Shera and after counting was over on

22-10-2010, there was procession of the group which emerged as victorious. According to the prosecution case, both the applicants were very much present in that procession and by forming unlawful assembly, they indulged in rioting and pelting of stones on the members of the group which lost the election. The learned Counsel for the applicants submitted that the allegations in the FIR shows that only three persons pelted stones and even there is counter FIR by the group which emerged as victorious. In submission of the learned Counsel for the applicants, both the applicants were not present on the spot of the incident and this fact is vouched by the certificates issued by their employer. The learned Counsel for the applicants has drawn attention of this court to the certificate dated 25-10-2012, issued by the District Livestock Development Officer, Zilla Parishad, Latur, stating therein that applicant - Dr. Deepak Shankar Sonawane, Veterinary Doctor, was present at Wadwal, Taluka Chakur, District Latur, on 22-10-2012. Another certificate was issued by the District Health Officer, Zilla Parishad, Latur, dated 23-10-2012, mentioning that another applicant - Yeshwant s/o. Sahebrao Sonawane, Medical Officer - was present at Primary Health Centre, Panchincholi, Taluka Nilanga, District Latur. Reliance is also placed on the affidavits of the employees stating that both the applicants were very much present at

the place of their duty on 22-10-2012, to demonstrate that they were not members of unlawful assembly.

3. Perused the charge sheet. FIR lodged by Harishchandra s/o. Limbaji Bhure, on 22-10-2012 categorically mentions presence of both the applicants in the procession which ultimately turned into unlawful assembly and indulged in pelting of stones on the rival groups. Statements of witnesses recorded by the Invesetigating Officer do show that both the applicants were very much present on the spot of the incident and were members of the unlawful assembly which indulged in rioting. True it is, that certificates are placed on record to show that both the applicants were present at the place of their duty on 22-10-2012, but this plea of alibi is to be proved by adducing evidence at the time of trial and the same is of no assistance at the time of framing of charge.

4. Considering the material collected during investigation, it cannot be said that there are no sufficient grounds to proceed against the applicants / accused and, therefore, no case is made out for discharge of the applicants.

(5)

Cri. Appln. No. 4739 of 2014

5. For the foregoing reasons, the Application is rejected. Needless to mention that these observations are prima facie observations which shall have no bearing on the decision in trial.

(A.M. BADAR)
JUDGE

.....

puranik / CRIAPPLN4739.14